

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. PAUL I. MARX, J.S.C.

-----X
THE TOWN OF RAMAPO,

Plaintiff,

-against-

CONG. BAIS CHINUCH ATERES BNOS, CONG.
DIVREI CHAIM, and JOHN DOE Numbers One
through Twenty, JOHN DOE being a fictitious name
used to represent individuals whose identities are
presently unknown,

Defendants.
-----X

To commence the statutory
time period for appeals as of
right (CPLR 5513 [a]), you
are advised to serve a copy
of this order, with notice of
entry, upon all parties.

DECISION AND ORDER

Index No. 030716/2018

Motion Seq. No. 1

Motion Date: Sept. 7, 2018

The following papers numbered 1 to 6 were read on Plaintiff's motion for summary judgment on all causes of action alleged in Plaintiff's complaint and for an order enjoining Defendants from all use and occupancy of the premises located at 261 Route 306, Monsey, NY, except in conformity with a valid certificate of occupancy:

Notice of Motion/Affirmation of James M. Birnbaum, Esq./Exhibits A-G	1-2
Affirmation of Terry Rice, Esq. in Opposition/Affidavit of Ari Waldman/	
Exhibits A-I	3-4
Supplemental Affirmation of Terry Rice, Esq./Exhibit.....	5
Affirmation of James M. Birnbaum, Esq. in Reply.....	6

Upon reading the foregoing papers, it is ORDERED that Plaintiff's motion is granted for the reasons which follow.

BACKGROUND:

Plaintiff filed a summons and complaint on February 9, 2018, demanding a judgment enjoining Defendants, their officials, directors, agents, employees and representatives from all use and occupancy of the premises located at 261 Route 306, Monsey, NY ("the premises"), except in conformity with a valid certificate of occupancy. Plaintiff alleges that the premises comprises a modular structure composed of ten interconnected trailers used by Defendants as a girl's school. Plaintiff alleges that the premises is occupied by over three hundred children and Defendant's employees and agents. Plaintiff alleges that it issued to Defendants a temporary certificate of

occupancy for the premises on or about September 18, 2015. Plaintiff alleges that the certificate expired on or about September 30, 2017. Plaintiff alleges that no new certificate has been issued. Plaintiff alleges that Defendants continue to use the premises as a school without a certificate of occupancy. As a result, Plaintiff alleges that Defendants are occupying the premises in violation of the Zoning Code of the Town of Ramapo § 376-149(c).

Plaintiff also alleges that Defendants are maintaining the premises in a dangerous condition, in violation of the Town of Ramapo Local Law § 6-1997 and Ramapo Town Code Section § 144-15 regarding electrical compliance, the Fire Code of New York, the Building Code of the State of New York and the Property Maintenance Code of the State of New York. Plaintiff attached as Exhibit A to its summons and complaint the affidavit of Joseph Tiso, Assistant Fire Inspector for the Town of Ramapo. He asserts that he discovered many fire safety and general safety violations during his inspection of the premises on February 2, 2018.

On June 13, 2018, Plaintiff brought the instant motion for summary judgment. The motion was adjourned by consent of the parties to September 7, 2018.

On August 22, 2018, Plaintiff brought an order to show cause seeking a temporary restraining order and a preliminary injunction enjoining Defendants from using or occupying the premises pending a final judgment in this action. The Court heard the matter on the record, and declined to sign the order to show cause, because it was duplicative of the pending motion for summary judgment.

DISCUSSION:

The Town of Ramapo Zoning Code § 376-149(a) states that: "Except for buildings constructed prior to February 5, 1930, no building shall be used or occupied in whole or in part unless or until a certificate of use or a certificate of occupancy, as appropriate, shall have been issued by the Building Inspector, and then only in conformity with said certificate(s)."

A town is permitted to bring an action to compel compliance with or to restrain by injunction the violation of any town ordinance, rule or regulation. Town Law §§ 135, 268. "Where a town seeks to enforce its building and zoning laws, it is entitled to a permanent injunction upon demonstrating that the party sought to be enjoined is acting in violation of the applicable provisions of local law". *Town of North East v Vitiello*, 159 AD3d 766, 766 [2nd Dept 2018]; *Town of Brookhaven v Mascia*, 38 AD3d 758 [2nd Dept 2007].

Plaintiff argues that Defendants are in violation of the Town of Ramapo Zoning Code § 376-149 by using and occupying the premises without a certificate of occupancy. Plaintiff argues that the temporary certificate of occupancy expired on September 30, 2017 and has not been renewed. Plaintiff also argues that the equities are in its favor, as it is charged with ensuring compliance with its laws and has a duty to protect the health, safety and welfare of its residents. Plaintiff argues that the dangerous conditions of the premises pose a life threat to the persons occupying the premises.

In opposition, Defendants argue that the balance of the equities favor them. Defendants argue that there is no fire or safety issue at the premises. Defendants assert that they have a Certificate of Compliance for Fire Safety valid until August 31, 2019. Defendants also argue that the “Building Inspector” testified in Court on August 24, 2018 that no fire or safety issues exist at the premises. Hence, there are no imminent safety issues that support the application.

Defendants also argue that they have been attempting to obtain approval of a permanent school for years. Defendants assert that they submitted a site plan application for a permanent school on July 6, 2015, and a revised site plan application on July 7, 2017.¹ Defendants argue that Plaintiff has been continuously delaying review of the application. Defendants assert that the hearing before the Planning Board was adjourned multiple times from August 29, 2017 to December 12, 2017. Defendants also assert that although the Planning Board referred the matter to the Zoning Board of Appeals on December 12, 2017, the Zoning Board did not hear the matter until July 19, 2018, and then on August 16, 2018.²

Finally, Defendants argue that granting Plaintiff’s motion would deprive the students of an education at the institution.

In reply, Plaintiff argues that Defendants have not proffered any defenses for occupying the premises without a certificate of occupancy. Plaintiff also argues that it did not delay review

1 It is unclear why Defendants took two years to submit a revised site plan. Defendants appear to be arguing that they were required to obtain a State Department of Transportation (“DOT”) permit prior to submitting the revised site plan. However, Defendants assert that they applied for a DOT permit on February 18, 2017 and a permit was issued on June 13, 2017. No explanation for the extended delay was offered.

2 Defendants’ attorney asserts that at Plaintiff’s counsel’s suggestion, he agreed to adjourn the July 19, 2018 hearing. He asserts that Plaintiff’s counsel advised him that he would get the matter adjourned and therefore did not appear for the hearing. Defendants’ attorney asserts that the matter was denied on July 19, 2018 because no one appeared for Defendants. He fails to explain how the matter was heard on August 16, 2018 if it had been denied on July 19, 2018.

of Defendants' application for a site plan. Plaintiff asserts that Defendants failed to mention in their opposition the fact that the Zoning Board of Appeals had actually heard the matter on February 1, 2018, which was continued to March 22, 2018, at which time the application was denied. Plaintiff asserts that Defendants submitted a new application in April 2018, and the hearing scheduled for July 19, 2018 was adjourned at their request to August 16, 2018.

Here, Plaintiff established its entitlement to a permanent injunction by demonstrating that Defendants are in violation of the Town of Ramapo Zoning Code § 376-149(a) by using and occupying the premises without a certificate of occupancy. Defendants have not raised an issue of fact warranting denial of Plaintiff's motion. There is no dispute that Defendants are using and occupying the premises without a certificate of occupancy. Although Defendants argue that the equities require a denial of the motion, a motion for a permanent injunction such as the one at issue does not require a determination of the equities. *Town of North East*, supra; *Town of Brookhaven v Mascia*, supra.

Nevertheless, even if the Court were to consider Defendants' argument on the equities, Defendants would not prevail. Defendants argued that Plaintiff has been delaying review of their site plan application for a permanent school. However, it does not appear from the parties' papers that Plaintiff engaged in any untoward delay. Defendants submitted a revised site plan application on July 7, 2017, which was heard by the Zoning Board of Appeals on February 1, 2018 and was later denied on March 22, 2018. Additionally, Plaintiff has the obligation to ensure and enforce compliance with its laws, even if there are no alarming safety issues at the premises.

Accordingly, Plaintiff's motion for summary judgment is granted. Plaintiff is entitled to judgment enjoining Defendants from all use and occupancy of the premises, except in conformity with a valid certificate of occupancy.

The foregoing constitutes the Decision and Order of this Court.

Dated: November 19, 2018
New City, New York

ENTER

HON. PAUL I. MARX, J.S.C.